IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.58 of 1994
Date of decision:18.10.2006

Hiralal Vermani, Chandigarh

....Petitioner

versus

The Commissioner of Income Tax, Patiala.

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Akshay Bhan, Advocate, for the petitioner.

Mr. SK Garg Narwana, Advocate, for the respondent.

JUDGMENT:

1. Following questions of law have been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its order dated 9.11.1993 in ITA No.257/Chandigarh/89, in respect of assessment year 1980-81:-

> "1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that the ratio of the judgment of the jurisdictional High Court in the case of **Smt.Amala Das v. CIT** (1984) 146 ITR 216 did not apply to the facts of the present case and in holding that the proceedings under section 147(b) of the Income Tax Act, 1961 had validly been initiated by the Assessing Officer?
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> 2. There being no existing proceedings under the Income Tax Act against the assessee in respect of the assessment year 1980-81 at the relevant time, whether the Tribunal was right in law in not having held that the commission issued by the Assessing Officer under section 131(1)(d) was not valid?"

2. Original assessment for the assessment year 1980-81 was

completed by the Assessing Officer on 10.3.1983. Subsequently, the Assessing Officer made a reference under section 131(d) of the Income Tax Act, 1961 (for short, 'the Act') to the Valuation Officer and finding that there was difference in the valuation reported, proceedings for re-assessment were initiated. The assessee challenged the same before the appellate authority but failed. Further appeal before the Tribunal also met the same fate.

3. The Tribunal, inter-alia, relied upon judgment of the Gujarat High Court in **Sakarlal Balabhai v. ITO** (1975) 100 ITR 97 to hold that the report of the valuation Officer constituted “information” under section 147 (b) on the basis of which the Assessing Officer could have “reason to believe” that income had escaped assessment. Judgment of this Court in **Smt.Amala Das**'s case (supra) was distinguished.

4. Learned counsel for the assessee submitted that the view taken by the Tribunal was erroneous in law and contrary to the view taken by this Court in **Smt.Amala Das**'s case (supra) and, therefore, initiation of re-assessment proceedings only on the basis of report of the Valuation Officer were not valid. It was submitted that mere change of opinion could not amount to “reason to believe”.

5. Learned counsel for the revenue supported the findings recorded by the Tribunal and submitted that it was not a case of mere change of opinion but income escaping assessment and the material on record justified the finding that the Assessing Officer had “reason to believe” that income had escaped assessment which entitled the assessing Officer to initiate re-assessment proceedings.

6. We have considered the rival submissions and perused the record.

7. We find that the issue has already been gone into by this Court in **CIT v. Suresh Kumar,** (2005) 275 ITR 253, wherein, following judgment of the Hon'ble Supreme Court in **Indian and Eastern Newspaper Society** v. CIT, (1979) 119 ITR 996, judgment of Calcutta High Court in **Smt.Rajeshwari Birla v. WTO**, (1979) 119 ITR 629 and earlier judgment of this Court in **Jindal Strips Limited v. ITO**, (1979) 116 ITR 825(FB), it was held that report of Departmental Valuation Officer being merely an estimate could not be treated as fresh or new information for purposes of

Section 147(b) of the Act.

8. In view of judgment of this Court in **Suresh Kumar'**s case (supra), question No.1 referred is answered in favour of the assessee and against the revenue.

9. As question No.1 has been answered in favour of the assessee, question No.2 as referred does not survive. Accordingly, the same is returned unanswered.

10. Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

October 18, 2006 (Rajesh Bindal)
'gs' Judge